

SENATE BILL 178

E2

11r0126
CF HB 162

By: **The President (By Request – Administration) and Senators King, Benson, DeGrange, Forehand, Garagiola, Madaleno, Manno, Mathias, McFadden, Montgomery, Peters, Ramirez, Raskin, Stone, Young, and Zirkin**

Introduced and read first time: January 24, 2011

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 22, 2011

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Child Neglect – ~~Penalties~~**

3 FOR the purpose of prohibiting a parent, family member, household member, or other
4 person who has permanent or temporary care or custody or responsibility for
5 supervision of a minor from neglecting the minor; establishing the misdemeanor
6 of child neglect and providing certain penalties for a violation of this Act;
7 ~~establishing a certain affirmative defense for a violation of this Act; providing~~
8 ~~that a sentence imposed for a violation of this Act may be separate from and~~
9 ~~consecutive to or concurrent with a certain other sentence; providing for the~~
10 ~~construction of this Act~~ that a sentence imposed under this Act is in addition to
11 a certain other sentence, except under certain circumstances; altering certain
12 procedures relating to the reporting and investigation of child neglect; defining
13 certain terms; and generally relating to child neglect.

14 BY adding to

15 Article – Criminal Law

16 Section 3–602.1

17 Annotated Code of Maryland

18 (2002 Volume and 2010 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – Family Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 RESPONSIBILITY FOR THE SUPERVISION OF A MINOR MAY NOT NEGLECT THE
2 MINOR.

3 (C) ~~(1)~~ A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF THE
4 ~~FELONY MISDEMEANOR~~ OF CHILD NEGLECT AND ON CONVICTION IS SUBJECT
5 TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING
6 \$10,000 OR BOTH.

7 ~~(2) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE OF VIOLATING~~
8 ~~THIS SECTION THAT THE SOLE REASON FOR THE FAILURE TO PROVIDE THE~~
9 ~~NECESSARY ASSISTANCE AND RESOURCES FOR THE PHYSICAL NEEDS OF THE~~
10 ~~MINOR WAS A LACK OF FINANCIAL RESOURCES.~~

11 ~~(D) (1) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE~~
12 ~~SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE~~
13 ~~FOR ANY CRIME BASED ON THE ACT ESTABLISHING THE VIOLATION OF THIS~~
14 ~~SECTION.~~

15 ~~(2) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT THE~~
16 ~~PROSECUTION OF A PERSON FOR A VIOLATION OF § 3-601 OF THIS SUBTITLE~~
17 ~~FOR EVENTS ARISING FROM THE SAME FACTS AND CIRCUMSTANCES AS COULD~~
18 ~~BE CHARGED AS A VIOLATION OF THIS SECTION WHEN THE EVENTS RESULT IN~~
19 ~~PHYSICAL INJURY TO A MINOR. A SENTENCE IMPOSED UNDER THIS SECTION~~
20 ~~SHALL BE IN ADDITION TO ANY OTHER SENTENCE IMPOSED FOR A CONVICTION~~
21 ~~ARISING FROM THE SAME FACTS AND CIRCUMSTANCES UNLESS THE EVIDENCE~~
22 ~~REQUIRED TO PROVE EACH CRIME IS SUBSTANTIALLY IDENTICAL.~~

23 Article – Family Law

24 5-704.

25 (a) Notwithstanding any other provision of law, including any law on
26 privileged communications, each health practitioner, police officer, educator, or human
27 service worker, acting in a professional capacity in this State:

28 (1) [(i)] who has reason to believe that a child has been subjected to
29 abuse OR NEGLECT, shall notify the local department or the appropriate law
30 enforcement agency]; or

31 (ii) who has reason to believe that a child has been subjected to
32 neglect, shall notify the local department]; and

33 (2) if acting as a staff member of a hospital, public health agency, child
34 care institution, juvenile detention center, school, or similar institution, shall

1 immediately notify and give all information required by this section to the head of the
2 institution or the designee of the head.

3 (b) (1) An individual who notifies the appropriate authorities under
4 subsection (a) of this section shall make:

5 (i) an oral report, by telephone or direct communication, as
6 soon as possible[:

7 1.] to the local department or appropriate law
8 enforcement agency [if the person has reason to believe that the child has been
9 subjected to abuse; or

10 2. to the local department if the person has reason to
11 believe that the child has been subjected to neglect]; and

12 (ii) a written report:

13 1. to the local department not later than 48 hours after
14 the contact, examination, attention, or treatment that caused the individual to believe
15 that the child had been subjected to abuse or neglect; and

16 2. with a copy to the local State's Attorney [if the
17 individual has reason to believe that the child has been subjected to abuse].

18 (2) (i) An agency to which an oral report of suspected abuse OR
19 NEGLECT is made under paragraph (1) of this subsection shall immediately notify the
20 other agency.

21 (ii) This paragraph does not prohibit a local department and an
22 appropriate law enforcement agency from agreeing to cooperative arrangements.

23 (c) Insofar as is reasonably possible, an individual who makes a report under
24 this section shall include in the report the following information:

25 (1) the name, age, and home address of the child;

26 (2) the name and home address of the child's parent or other person
27 who is responsible for the child's care;

28 (3) the whereabouts of the child;

29 (4) the nature and extent of the abuse or neglect of the child, including
30 any evidence or information available to the reporter concerning possible previous
31 instances of abuse or neglect; and

- 1 (5) any other information that would help to determine:
2 (i) the cause of the suspected abuse or neglect; and
3 (ii) the identity of any individual responsible for the abuse or
4 neglect.
5 5-705.

6 (a) (1) Except as provided in paragraphs (2) and (3) of this subsection,
7 notwithstanding any other provision of law, including a law on privileged
8 communications, a person in this State other than a health practitioner, police officer,
9 or educator or human service worker who has reason to believe that a child has been
10 subjected to abuse or neglect shall]:

11 (i) if the person has reason to believe the child has been
12 subjected to abuse,] notify the local department or the appropriate law enforcement
13 agency]; or

14 (ii) if the person has reason to believe the child has been
15 subjected to neglect, notify the local department].

16 (2) A person is not required to provide notice under paragraph (1) of
17 this subsection:

18 (i) in violation of the privilege described under § 9-108 of the
19 Courts Article;

20 (ii) if the notice would disclose matter communicated in
21 confidence by a client to the client's attorney or other information relating to the
22 representation of the client; or

23 (iii) in violation of any constitutional right to assistance of
24 counsel.

25 (3) A minister of the gospel, clergyman, or priest of an established
26 church of any denomination is not required to provide notice under paragraph (1) of
27 this subsection if the notice would disclose matter in relation to any communication
28 described in § 9-111 of the Courts Article and:

29 (i) the communication was made to the minister, clergyman, or
30 priest in a professional character in the course of discipline enjoined by the church to
31 which the minister, clergyman, or priest belongs; and

32 (ii) the minister, clergyman, or priest is bound to maintain the
33 confidentiality of that communication under canon law, church doctrine, or practice.

1 **(b) (1)** An agency to which a report of suspected abuse OR NEGLECT is
2 made under subsection (a) of this section shall immediately notify the other agency.

3 **(2)** This subsection does not prohibit a local department and an
4 appropriate law enforcement agency from agreeing to cooperative arrangements.

5 **(c)** A report made under subsection (a) of this section may be oral or in
6 writing.

7 **(d) (1)** To the extent possible, a report made under subsection (a) of this
8 section shall include the information required by § 5-704(c) of this subtitle.

9 **(2)** A report made under subsection (a) of this section shall be
10 regarded as a report within the provisions of this subtitle, whether or not the report
11 contains all of the information required by § 5-704(c) of this subtitle.

12 5-706.

13 **(a)** Promptly after receiving a report of suspected abuse or neglect of a child
14 who lives in this State that is alleged to have occurred in this State[:

15 **(1)**, the local department or the appropriate law enforcement agency, or
16 both, if jointly agreed on, shall make a thorough investigation of a report of suspected
17 abuse OR NEGLECT to protect the health, safety, and welfare of the child or children[;
18 or

19 **(2)** the local department shall make a thorough investigation of a
20 report of suspected neglect to protect the health, safety, and welfare of the child or
21 children].

22 **(b)** Within 24 hours after receiving a report of suspected physical or sexual
23 abuse of a child who lives in this State that is alleged to have occurred in this State,
24 and within 5 days after receiving a report of suspected neglect or suspected mental
25 injury of a child who lives in this State that is alleged to have occurred in this State,
26 the local department or the appropriate law enforcement agency shall:

27 **(1)** see the child;

28 **(2)** attempt to have an on-site interview with the child's caretaker;

29 **(3)** decide on the safety of the child, wherever the child is, and of other
30 children in the household; and

31 **(4)** decide on the safety of other children in the care or custody of the
32 alleged abuser.

33 **(c)** The investigation under subsection (b) of this section shall include:

1 (1) a determination of the nature, extent, and cause of the abuse or
2 neglect, if any;

3 (2) if mental injury is suspected, an assessment by two of the
4 following:

5 (i) a licensed physician, as defined in § 14–101 of the Health
6 Occupations Article;

7 (ii) a licensed psychologist, as defined in § 18–101 of the Health
8 Occupations Article; or

9 (iii) a licensed social worker, as defined in § 19–101 of the Health
10 Occupations Article; and

11 (3) if the suspected abuse or neglect is verified:

12 (i) a determination of the identity of the person or persons
13 responsible for the abuse or neglect;

14 (ii) a determination of the name, age, and condition of any other
15 child in the household;

16 (iii) an evaluation of the parents and the home environment;

17 (iv) a determination of any other pertinent facts or matters; and

18 (v) a determination of any needed services.

19 (d) On request by the local department, the local State’s Attorney shall assist
20 in an investigation under subsections (b) and (c) of this section.

21 (e) The local department, the appropriate law enforcement agencies, the
22 State’s Attorney within each county and Baltimore City, the local department’s office
23 responsible for child care regulation, and the local health officer shall enter into a
24 written agreement that specifies standard operating procedures for the investigation
25 under subsections (b) and (c) of this section and prosecution of reported cases of
26 suspected abuse OR NEGLECT.

27 (f) (1) The agencies responsible for investigating reported cases of
28 suspected sexual abuse, including the local department, the appropriate law
29 enforcement agencies, and the local State’s Attorney, shall implement a joint
30 investigation procedure for conducting joint investigations of sexual abuse under
31 subsections (b) and (c) of this section.

32 (2) The joint investigation procedure shall:

1 (i) include appropriate techniques for expediting validation of
2 sexual abuse complaints;

3 (ii) include investigation techniques designed to:

4 1. decrease the potential for physical harm to the child;
5 and

6 2. decrease any trauma experienced by the child in the
7 investigation and prosecution of the case; and

8 (iii) establish an ongoing training program for personnel
9 involved in the investigation or prosecution of sexual abuse cases.

10 (g) (1) To the extent possible, an investigation under subsections (b) and
11 (c) of this section shall be completed within 10 days after receipt of the first notice of
12 the suspected abuse or neglect by the local department or law enforcement agencies.

13 (2) An investigation under subsections (b) and (c) of this section which
14 is not completed within 30 days shall be completed within 60 days of receipt of the
15 first notice of the suspected abuse or neglect.

16 (h) Within 10 days after the local department or law enforcement agency
17 receives the first notice of suspected abuse **OR NEGLECT** of a child who lives in this
18 State that is alleged to have occurred in this State, the local department or law
19 enforcement agency shall report to the local State's Attorney the preliminary findings
20 of the investigation.

21 (i) Within 5 business days after completion of the investigation of suspected
22 abuse **OR NEGLECT** of a child who lives in this State that is alleged to have occurred
23 in this State, the local department and the appropriate law enforcement agency, if
24 that agency participated in the investigation, shall make a complete written report of
25 its findings to the local State's Attorney.

26 (j) Promptly after receiving a report of suspected abuse or neglect of a child
27 who lives in this State that is alleged to have occurred outside of this State, the local
28 department shall:

29 (1) forward the report to the appropriate agency outside of this State
30 that is authorized to receive and investigate reports of suspected abuse or neglect;

31 (2) cooperate to the extent requested with the out-of-state agency
32 investigating the report; and

33 (3) if determined appropriate by the local department:

- 1 (i) interview the child to assess whether the child is safe; and
- 2 (ii) provide services to the child and the child's family.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2011.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.